Supreme Court, U.S.
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No. 93-973

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1993

MANILDRA MILLING CORPORATION, *Petitioner*,
v.
OMI HOLDINGS, INC., *Respondent*.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

PETITIONER'S REPLY MEMORANDUM

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RULE 29.1 LIST OF PARENT COMPANIES

Manildra Milling Corporation is a wholly owned subsidiary of Honan Holdings, USA, Inc. It has no subsidiaries to list pursuant to Rule 29.1.

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ARGUMENT

OMI's arguments do not address the basic premise of Manildra's Petition: The Federal Circuit, following what has become a pattern, improperly engaged in fact-finding at the appellate level contrary to a jury's verdict based on substantial evidence.

I. The Federal Circuit's Decision Does Raise Seventh Amendment Issues.

The Federal Circuit denied Manildra's Seventh Amendment rights by ousting the jury's verdict in favor of its own inferences from the evidence and assignment of credibility to witnesses. *See, Slocum v. New York Life Ins. Co.*, 228 U.S. 364 (1912). Contrary to OMI's assertion (OMI Br. 2), Manildra takes no issue with a JMOL or its standard. Manildra's argument is that the Federal Circuit, while paying lip service to the proper standard of review, actually ignored it. OMI's argument that discerning an "absence" of evidence is not "fact-finding" is really a word game, based on OMI's (and the Federal Circuit's) discounting the evidence that was adduced. By any fair definition, that process is "fact-finding."

Finally, Ogilvie argues that "Manildra simply disagrees with the Federal Circuit" on the interpretation of the evidence (OMI Br. 3). But the issue is not whether different conclusions can be drawn about the evidence; it is whether the jury's findings were reasonable. *See* Man. Pet. 15. Ogilvie virtually admits that the requisite quantum of evidence exists when its states that "Manildra has offered just five individual pieces of circumstantial evidence to support its claims." OMI Br. 12-13.

II. The Federal Circuit's Fact-Finding Was Improper.

OMI's argument that the jury engaged in speculation on "severely attenuated evidence," and that evidence "could not support a reasonable inference in Manildra's favor" (OMI Br. 5-6) admits that there was evidence before the jury to support the Lanham Act and Kansas unfair competition claims. OMI's disparagement of that evidence might properly have been addressed to a fact-finder, but it is not an argument that the evidence does not exist. "Only when there is a complete absence of probative facts to support the conclusion reached does a reversible error appear." *Lavender v. Kurn*, 327 U.S. 645, 653 (1946)

A. The Jury Findings Left Intact. The fact that the Federal Circuit let stand some of the jury's findings is irrelevant. The Seventh Amendment is not satisfied by giving half a jury trial.

B. Evidence of OMI's Conduct. Manildra agrees that the Federal Circuit considered only the evidence of OMI's conduct.[1] As shown below, the evidence addressed in Manildra's Petition

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[1] Manildra believes that that limitation was clearly erroneous. Upon purchasing the business and patents from Henkel, OMI retained Henkel's general manager, chief of sales, head technician and chief of production. It also stressed to customers the "continuity" of the business. OMI acknowledges that Henkel made accusations of infringement (OMI Br. 15) and there was *no* evidence showing that any change in policy was adopted or even considered by OMI when it bought the business. This Court has considered evidence of prior conduct to be proper to "shed light on the true character of matters occurring [subsequently]." *Local No. 1421 Int'l Mach. v. NLRB*, 362 U.S. 411, 416 (1960). Given the identity of actors and the key positions they held, coupled with the total absence of evidence that OMI changed the policy when it took control, the trial court's admission of the Henkel evidence for this limited purpose was proper and should have been respected by the Federal Circuit.

relates only to OMI's conduct during the period it owned the patents in issue.

C. Manildra Relies Only On OMI Evidence. OMI's suggestion that the four items of evidence addressed in its brief are evidence only of Henkel's conduct is incorrect. Items 1, 3 and 4 refer solely to OMI's conduct; item 2, while possibly ambiguous, supports a reasonable interpretation that OMI was the actor.

1. Exhibit 715. Exhibit 715 (Man. Pet. 94a) says: "*Ogilvie* has stated that...Manildra infringes." Man. Pet. 16 (emphasis added). OMI argues that that document is an "uncorroborated second hand report." However, "[i]t is the jury, not the court, which is the fact-finding body. It weighs the contradictory evidence and inferences, judges the credibility of the witnesses." *Gallick v. B&O*, 372 U.S. 108, 114 (1963). It was uncontested that the memorandum was preceded by several communications from OMI regarding the patents, legitimate sellers and licenses. *See*, Man. Pet. pp. 17-19. OMI's own record of one of those conversations records that "Manildra has given a hold harmless letter regarding *any possible violations of patents*" Ex. 713, Man. Pet. p. 91a (emphasis added). Given that and other evidence, it was reasonable for the jury to conclude that Exhibit 715 was an accurate record of OMI's assertions of infringement. There is no basis for attributing the statement to Henkel.

2. Dunn Testimony. OMI claims that the admission of Robert Dunn, the general manager of both Henkel and Ogilvie, that he "may have" told the trade that Manildra was infringing, was ambiguous as to (1) whether it referred to when he was with Henkel or with Ogilvie, and (2) whether "may have" told meant "did" tell. OMI's point ignores that it is for the jury, not the court of appeals, to resolve ambiguities: "Traditionally, it is the function of the jury to evaluate the credibility and meaning of 'necessarily self-serving

statements' and 'ambiguous conduct.'" *United States v. Baily*, 444 U.S. 394, 427 (1980) (criminal trial).

The jury was reasonable in concluding that the statement referred to the time period when Dunn was with OMI.[2] OMI introduced no evidence through Dunn or anyone else that it did not accuse Manildra of infringement. If Dunn knew that he did not tell customers that Manildra was infringing, his testimony would have been a flat denial, rather than, "I may have."

3. Keller Testimony. OMI's contention that the Keller evidence relates to Henkel is incorrect. While Henkel's sales chief, Calott, did visit Keller in 1984, Calott greatly stepped up his contacts after OMI took over. He spoke with Keller about the patents shortly after OMI bought the business and followed up by confirming that OMI had all the patents and Midwest was licensed to sell. Exhibit 684, Man. Pet. p. 88a. He met with Keller in January and August, 1986; the patents and Manildra were discussed at both meetings. Exhibits 697 and 713, Man. Pet. p. 89a-92a. At the latter meeting, the content of OMI's "litany" was revealed in Calott's own record of Keller's response: "[Keller] commented that Manildra has given them a hold harmless letter regarding *any possible violations of patents.*" Exhibit 713, Man. Pet. p 91a, emphasis added. The Keller evidence during OMI's tenure thus was

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[2] Questions addressed to Dunn delimited the time period of 1985-1990, when OMI was the patent owner (Tr. 8038, p. 1a below) and asked whether, during that period, OMI told customers about the patents (Tr. 8039, p. 2a below). Dunn answered affirmatively, and then did so again when the question involved both Henkel and OMI. Thereafter, he admitted that he may have charged that Manildra was infringing. Tr. 8040-41, pp. 3a-4a below. The jury was entitled to resolve this ambiguity, as it did, in favor of Manildra.

easily more vivid and compelling than during Henkel's. *See* Man. Pet. 17-20.

OMI's contention that the Keller evidence was contradictory (OMI Br. 17) is not relevant, since "the jury is free to discard or disbelieve whatever facts are inconsistent with its conclusion." *Lavender v. Kurn*, 327 U.S. at 653. OMI's interpretation of Keller's testimony is itself inconsistent with Keller's overall testimony (*see* Man. Pet. 62a-64a) and with the memo he wrote which recorded OMI's statements about Manildra's infringement (Exhibit 715), but it was for the jury to decide which version to believe.

4. OMI Salesmen. OMI's claim that comments by OMI salesmen were unrelated in any way to infringement (OMI Br. 18) is, again, its own questionable interpretation. While the word "infringement" is not in those statements, the words "possible violations of patents" were written by OMI's own director of sales in one of his call reports. Ex. 713, Man. Pet. 91a. A reasonable jury could, and did, construe those statements in the context of OMI's assertion of its ownership of the patents and Manildra's lack of license (See Man. Pet. 17-19), and conclude that OMI was charging Manildra with infringement.

D. The Federal Circuit Has Not Shown Proper Deference to Jury Verdicts. To illustrate the frequency with which the Federal Circuit reverses jury verdicts, Manildra prepared a table showing that, on the basis of lack of substantial evidence, that court reversed jury verdicts in whole or in part in 16 out 38 cases since 1988. Man. Pet. 109a. OMI challenges the list on various grounds, including Manildra's supposed misreading of the opinions. Manildra continues to believe that the cases in question were appropriately cited. For the convenience of the Court in considering this dispute, Manildra has prepared another table (Table 1, p. 5a below) quoting the actual language used by the Federal

Circuit in reversing a jury verdict for lack of substantial evidence in fifteen cases.[3]

E. OMI Conceded That It Told Customers That Manildra Was Infringing. OMI argues that it has asserted that Manildra's Lanham Act and Kansas unfair competition claims were unsupported by the evidence, and cites several instances where it made broad denials that it had threatened customers or that it made its charges with malice. In none of those instances, however, did OMI deny telling the trade that Manildra was infringing. OMI repeatedly told the trial court and the court of appeals that it did tell customers that Manildra was infringing, arguing that those statements were made in good faith. *See* Man. Pet. 20-23. Those admissions should have precluded the Federal Circuit from concluding otherwise.

III. OMI's Proposed New Standard of Proof Would Change Almost a Century of Precedent; In Any Case, Manildra Met That Standard.

OMI's suggestion that the Federal Circuit could have required a clear and convincing evidence standard under the Lanham Act and Kansas tort claims is academic, since Manildra satisfied that standard. There is no authority for such a heightened standard, and even if there were, the proper course would be to order a new trial rather than to reverse the judgment of liability.

The jury found affirmatively on verdict question 18:

> Do you find that Manildra Milling Corporation has proven by the requisite burden of proof any of the conditions described in Instruction 24?

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[3] The sixteenth case is the present one.

Instruction 24 stated that Manildra had to establish one of the following conditions as a predicate for recovery under the antitrust laws:

> 1. The patents were obtained by [OMI's] predecessors who knowingly and wilfully misrepresented, or failed to disclose, material facts to the Patent Office, which, had the Patent Office been aware of the true facts, would have caused the Patent Office not to issue the patents, and [OMI] knew of such conduct, when it sought to enforce its patent rights; or
>
> 2. [OMI] asserted its patent rights when it knew, or should ave known, that its patents were either invalid or unenforceable, or had not been infringed by Manildra; or
>
> 3. [OMI] used the patents, even if it in good faith believed them to be valid and enforceable as part of a larger scheme to monopolize the large granule wheat starch market or a recognized sub-market thereof.
>
> Manildra has the burden of proving the existence of conditions 1 or 2 above by evidence which is clear and convincing.

We know that the jury found affirmatively on Condition 2, since it found no inequitable conduct before the Patent Office (Condition 1) or monopolization (Condition 3). Consequently it must have found the second condition satisfied -- specifically that Manildra had proved by clear and convincing evidence that OMI used the patents in bad faith, while it knew or should have known that the patents were invalid or not infringed. That determination was consistent with the predicates for finding a violation of the

Lanham Act[4] and the Kansas state torts of interference with prospective advantage[5] and injurious falsehood.[6]

There is no authority supporting OMI's suggested heightened standard; indeed, there is 85 years worth of precedent imposing liability under those laws without any requirement of a heightened evidentiary standard.[7]

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[4] "[OMI] has made misrepresentations that its large granule wheat starch is the only lawfully produced large granule wheat starch in the United States other than that produced by its licensee" Instruction 37.

[5] No justification based upon a "good faith belief is to the validity and enforceability of [the] patent, and with a good faith belief that the patent has been infringed." Instruction 36.

[6] False statement "maliciously" made. Instruction 41.

[7] *See, e.g., Reazin Paper Goods Co. v. Dittgen*, 171 F.631, 635-36 (7th Cir. 1909) (damages and injunctive relief under state unfair competition law properly based on overbroad assertion of patent rights); *Maytag Co. v. Meadows Mfg. Co.*, 35 F.2d 403, 407-8 (7th Cir. 1929), *cert. denied*, 281 U.S. 737 (1930)(injunctive relief under state unfair competition law properly granted based upon false statements to customers that Meadows infringed Maytag patents; court assumed that Meadows also had remedy at law); *International Industry and Development, Inc. v. Farbach Chem Co.*, 241 F.2d 246 (6th Cir. 1957) (letter sent in bad faith to customers asserting infringement justified award of damages for unfair competition); *U.S. Aluminum Corp./Texas v. Alumax, Inc.*, 831 F.2d 878, 880-81 (9th Cir. 1987), *cert. denied*, 488 U.S. 822 (1988)(state action lies for malicious prosecution based upon a showing of malice and bringing action for alleged patent infringement; clear and convincing evidence standard expressly rejected); *Tele-Sonic Packaging Corp. v. Errich International Corp.*, 173 F.Supp. 335, 347-48 (S.D. N.Y. 1959) (bad faith and misleading notice of patent infringement constitutes actionable unfair

Ogilvie cites three cases in support of a heightened standard; none are apposite. In *Handgards, Inc. v. Ethicon, Inc.*, 601 F.2d 986 (9th Cir. 1979), *cert denied*, 444 U.S. 1025 (1980), the Court of Appeals for the 9th Circuit did impose a clear and convincing evidence standard for an *antitrust* claim. However, that very court later refused to require a clear and convincing evidence standard to make out a state claim for malicious prosecution in bringing an action for patent infringement. *U.S. Aluminum Corp/Texas v. Alumax, Inc.*, *supra*, 831 F.2d at 880-81. The court focused on the mandatory treble damages remedies of the antitrust laws and the inhibitions those damages could cause on the exercise of patent rights. *Id.*; *see also, Handgards, supra*, 601 F.2d at 993. Since the malicious prosecution law (like the Lanham Act and Kansas state torts) imposes no such mandatory trebling, the court found no reason for going beyond the substantial evidence test.

OMI's reliance on *Tubeco, Inc. v. Crippen Pipe Fabrication Corp.*, 402 F.Supp. 838 (E.D. N.Y. 1975), *aff'd*, 538 F.2d 314 (2d Cir. 1976) and *Lang v. Pacific Marine and Supply Co.*, 703 F.Supp. 1404 (D. Haw. 1989), *aff'd*, 895 F.2d 761 (Fed. Cir. 1990) is also misplaced. In neither case was there any allegation that the party accused of violating the Lanham Act had ever suggested to anyone that the accusing party was a patent infringer. In both cases, the accused party simply claimed that it owned patents (which it did) and made no charges whatsoever that anyone

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competition); *Chromium Industry v. Mear Polishing and Plating Co., Inc.*, 448 F.Supp. 544, 557 (N.D. Ill. 1978) (Lanham Act Section 43(a) action may be based upon knowingly overbroad assertions of patent coverage and infringement); *Brandt Consolidated, Inc. v. Agrimar Corp.*, 801 F.Supp. 164, 174 (C.D. Ill. 1992) (Lanham Act Section 43(a) action lies for false representations of patent infringement).

infringed those patents. 703 F.Supp. at 1406, 1411; 402 F.Supp. at 843, 847.

Finally, even if the clear and convincing standard of proof should have been required and even if Manildra had not met that standard, the proper course of action for the Federal Circuit would have been to remand the case for a new trial rather than outright reversal.

CONCLUSION

OMI's extensive argument about the evidence vividly demonstrates Manildra's basic point: there was a great deal of meat for the jury to chew, and the Federal Circuit acted improperly in rejecting the jury's verdicts for a lack of the requisite evidence. OMI's so-called "challenges" to the existence of the requisite evidence were only vague and general complaints, easily outweighed by the specific admissions that it "stated to customers" that Manildra was infringing. Finally, OMI's proposed new standard of review is not supportable by any concern about chilling the proper exercise of patent rights and would reverse nearly a century of precedent; in any event, that standard was satisfied by Manildra in this case.

Respectfully submitted,

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APPENDIX

[Dunn Tr. 8038]

Q. And you also know that the 725 patent and the 718 patents say that drying and reslurrying is-- is not the-- the process to be used?
A. I don't know that, no, Mr. Walch.
Q. All right. But you'd stand on what the patent says on that subject?
A. I certainly would.
Q. All right. From 1981 to 1991, you knew that Manildra had the lowest price in the market, large granule wheat starch.
A. What was the time period?
Q. 1981 to 1991.
A. I'm not sure of that.
Q. Well, how about from '85 to '91?
A. I don't know, for example, in '91 what Midwest Solvents' price is.
Q. All right. Let's take--
A. So I can't answer the--
Q. -- take the stub period out of it. '85 to '90.
A. Well, with the same qualification. I-- I don't-- I don't have access--
Q. Well, I don't want to get into a quibble. I'm just trying to sum up a few things here. You know it's been lower than Ogilvie's.

[Dunn Tr. 8039]

A. That I know.
Q. All right. We won't worry about Midwest for the moment. You also have no reason to believe there was anything wrong with Manildra's quality?
A. It-- it was used by at least two customers, so it must be satisfactory to them.
Q. All right. And during this period of time, either you or your sales staff have advised your customers that you have patents?
A. Well, they-- we didn't have to advise them of that. They knew all about these patents long before we acquired them.
Q. But you've also told them or advised them on occasion that there are patents out there?
A. They would raise questions about them, yes.
Q. In response-- regardless of who raised the question, you've told them that there are patents?
A. Yeah, they knew there were patents.
Q. They knew it, but you never told them that. Is that what you're testifying to?
A. I didn't have to. Staley had the patents before us. They knew all about the patents.
Q. My question is real simple, did you or did you

[Dunn Tr. 8040]

not ever tell a customer that either Henkel or Ogilvie held the patents on the large granule wheat starch?

A. We did. We informed them that we acquired them from Staley.

Q. Nothing to do with why you did it, I'm sure from your perspective your motives were sound. Just the fact is you did it. You or your sales staff also--

MR. GREGORY: Is that a question, Your Honor?

THE COURT: Ask your question, Mr. Walch. Go ahead and ask your question.

Q. You or your sales staff also have from time to time either in response to a question or on your own initiative told them that-- told certain customers that you thought Manildra was infringing those patents?

A. If they asked the question and would bring up the subject of Manildra, we would try and answer those questions as honestly as we knew how.

Q. All right. And on those occasions, you did tell them that Manildra-- you thought Manildra was infringing the patent?

[Dunn Tr. 8041]

A. I-- I may have.
Q. All right. And you also advised the customers from time to time, regardless of whether they asked a question or you initiated it, that Midwest was the only licensee?
A. Yes, we did.
Q. Okay. And also from time to time you and others have made statements to the customer to the effect that although you'd hate it, this situation could lead to a lawsuit, or words to that effect?
A. No, I think you're changing that a bit. What we told them that-- in that reference was that if a lawsuit were to acquire-- to occur, much as we wouldn't like it, a customer might be drawn in as a witness.
Q. All right. At least you told them that?
A. Yes.
Q. Now, also-- and we've been through this earlier today, without getting into the service and all of the other factors, you at least agree with me that the patents have been-- the existence of the patents have been a factor in enabling Ogilvie to enjoy a much larger market share than Manildra despite

Table 1

Collins Licensing, L.P. v. AT&T, No. 92-1201,-1294, 1993 U.S. App. LEXIS 29093, (Fed. Cir. Nov. 5, 1993)

> After a jury trial, judgment was entered against AT&T in accordance with special verdicts that claims 29, 34, 37-39, 43 and 47-48 are not invalid and that AT&T had infringed only claim 29 of the asserted claims.
>
> ***
>
> However, the jury would have had to find that the prior art does not show individual control of a time module or a space module. On this record, substantial evidence does not support such a finding. [pp. 1, 9]

Mendenhall v. Cedarapids, Inc., 5 F.3d 1557, 1576 (Fed. Cir. 1993)

> Cedarapids argues that, as a matter of law, claims 12 and 13 are invalid for obviousness (as well as claim 1) based on the prior art including prior art respecting the temperature limitations.
>
> ***He makes no argument going to the merits, stating only that there was "ample evidence" to support nonobviousness of all claims. The evidence cited is the testimony of a witness who merely stated he believed the patent office had considered all of the prior art raised by Cedarapids against Mr. Mendenhall's '904 and '905 patents. This does not negate the merits of Cedarapids' challenge. In view of these circumstances, we hold that claims 12 and 13 of the

'904 patent were also proved invalid for obviousness. [p. 1576]

John H. Ernster and Excelpro, Inc. v. Ralston Purina Co., No. 91-1270,-1271,-1281, 1992 U.S. App. LEXIS 26507 (Fed. Cir. Oct. 13, 1992), *cert denied*, 123 L.Ed.2d 472, __ U.S. __ (1993)

> The district court entered judgment, based on jury verdicts, for validity, willful patent infringement, "conspiracy to commit patent infringement," trade secret misappropriation, intentional interference with business relations (against Deltown only), unjust enrichment, and fraud (against Ralston only). Because on this record no reasonable jury could have reached this result, this court reverses the judgments of infringement and willful [*2] infringement *** Because appellees did not produce sufficient evidence to support the state law claims, this court reverses the judgments of trade secret misappropriation, intentional interference with business relations, unjust enrichment, and fraud. [p. 1]

Oiness v. Walgreen Company, No. 91-1467,-1496, 1992 U.S. Ap. LEXIS 26505 (Fed. Cir. Oct. 8, 1992), *cert denied*, 123 L.Ed.2d 473, __ U.S. __ (1993)

> On the record, this court finds no substantial evidence supporting the jury's damage award.
>
> ***
>
> Because the jury instructions did not adequately distinguish between damages for the separate 1985-86 infringement and because substantial evidence does not support the jury's

damages award, this court vacates that award and remands. [pp. 3-5]

Braun Inc. v. Dynamics Corporation of America, 975 F.2d 815, 822-23 (Fed. Cir. 1992)

> We must determine whether there is substantial evidence, when viewed as a whole, upon which a jury could determine under the clear and convincing evidence standard that Waring willfully infringed Braun's patent. We find insufficient evidence upon which the jury could rely. [pp. 822-23]

Read Corp. v. Portec, Inc., 970 F.2d 816, 825 (Fed. Cir. 1992)

> Having reviewed the evidence of record, we agree with Portec that substantial evidence does not support the jury's verdict of infringement under the correct legal standard for infringement of a design patent. [p. 825]

Jerome H. Lemelson v. General Mills, Inc., 968 F.2d 1202 (Fed. Cir. 1992), *cert denied*, 122 L.Ed.2d 131, __ U.S. __ (1993)

> Finding no problem with the jury instructions, we are left to consider whether substantial evidence, in light of the applicable law, supports the jury's verdict.
>
> ***
>
> We therefore conclude that no reasonable jury could read reissue claim 3 both to be valid in view of Gardiol *and* infringed by Hot Wheels. [pp. 1207, 1208]

Malta v. Schulmerich Carillons, Inc., 952 F.2d 1320 (Fed. Cir. 1991), *cert denied*, 119 L.Ed.2d 566 (1992)

> I respectfully dissent, for neither the law nor the record provides a basis for overturning the jury's verdict. Upon full trial, upon agreed and correct jury instructions, upon substantial evidence in the form of testimony and exhibits and demonstrations, a reasonable jury could have reached the verdict of infringement reached by this jury. That ends our review. With all respect o my colleagues on this panel, their rejection of the jury verdict and *de novo* determination of the factual issue of infringement is contrary to the law governing appellate review of jury verdicts. [*dissent*, p. 1331]

Tol-O-Matic, Inc. v. Proma Produkt-Und Marketing, 945 F.2d 1546 (Fed. Cir. 1991)

> The jury found that the subject matter of claim 25 was "not useful". On this finding, the district court held claims 25-31 invalid for failure to meet the utility requirement of 35 U.S.C. § 101 [Footnote omitted].
>
> ***
>
> On the evidence adduced, a reasonable jury could not have found the "total incapacity" that is required to prevail on a lack of utility defense under § 101. [pp. 1552, 1553]

Wilson Sporting Goods Co. v. David Geoffrey & Associates, 904 F.2d 677, 685 (Fed. Cir.), *cert denied*, 498 U.S. 992 (1990)

> The only theory of liability presented to the jury by Wilson was infringement under the doctrine of equivalents.

> Dunlop's argument for reversal is straightforward. It contends that there is no principled difference between the balls which the jury found to infringe and the prior art Uniroyal ball; thus to allow the patent to reach Dunlop's balls under the doctrine of equivalents would improperly ensnare the prior art Uniroyal ball as well.
>
> ***
>
> We hold that these differences are so slight and relatively minor that the hypothetical claim-which permits twice as many intersecting dimples, but with slightly smaller intersections-viewed as a whole would have been obvious in view of the Uniroyal ball. [pp. 683, 685]

Senmed, Inc. v. Richard-Allan Medical Industries, Inc., 888 F.2d 815, 821-26 (Fed. Cir. 1989)

> Here the jury returned a naked verdict stating the ultimate fact of infringement. That circumstance requires the district court, and this court on appeal, to presume not only the jury's claim interpretation but also the findings necessary to support that interpretation [citation omitted]. Whether the jury premised its infringement finding on a literal reading of the claim or on the doctrine of equivalents, the claim interpretation necessary to support a finding of infringement cannot in this case be supported by the record. [pp. 10-11]
>
> DISSENT: NEWMAN, Circuit Judge, dissenting.
> This appeal is from a jury verdict of infringement, yet it is difficult to find in the majority opinion any deference to the jury, or application of the standard by which jury verdicts are reviewed on appeal***

> It is no more appropriate for the appellate court, than for the trial court on motion for judgment n.o.v., to decide the issue of infringement independent of the jury verdict. [p. 19]

Lear Siegler, Inc. v. Sealy Mattress Company of Michigan, Inc., 873 F.2d 1422, 1426 (Fed. Cir. 1989)

> Responding to a special verdict form, the jury determined that the patents were infringed, not literally but under the doctrine of equivalents***
>
> The court denied the motions for JNOV and for a new trial. Although acknowledging *Nestier's* requirement that equivalence of function, means, and result must be specified to the jury, the court said the requirement had been met. In the court's view, on the basis of the testimony, arguments, and exhibits as presented, the jury was perfectly capable of reaching a reasonable conclusion with regard to equivalence
>
> ***
>
> The evidence was fatally deficient for failure of explication as required by *Nestier*. [pp. 1424, 1425, 1427]

Sun Studs, Inc. v. ATA Equipment Leasing, Inc., 872 F.2d 978, 993 (Fed. Cir. 1989)

> The questions of laches and estoppel were submitted to the jury, who found that laches applied against Sun Studs on sawmill infringement but no on veneer mill infringement***

> The jury verdict of laches as to sawmills can not stand, for there was not substantial evidence on which this verdict could have been reached. [p. 993]

Dana Corporation v. IPC Limited Partnership, 860 F.2d 415, 419-20 (Fed. Cir. 1988), *cert denied*, 490 U.S. 1067 (1989)

> The district court, on the basis of a general jury verdict, held the '621 patent to be valid, enforceable and willfully infringed by IPC
>
> ***Therefore, the trial court's denial of IPC's JNOV motion on best mode grounds cannot stand because it was based upon an incorrect interpretation of the law. Rather than remand this case for a proper application of the law, however, we are convinced there are sufficient established facts of record to exercise our discretion to determine the merits of IPC's JNOV motion *** In order to grant IPC's JNOV motion we must determine as a matter of law that, upon the evidence presented at trial, reasonable minds could not have found that the best mode requirement was satisfied. [pp. 417, 419]

Sjolund v. Musland, 847 F.2d 1573 (Fed. Cir. 1988)

> This suit for patent infringement was tried to a jury and, by agreement of the parties, presided over by a magistrate. Defendants...appeal from the judgment entered on the jury's verdict, holding them liable for infringing Roger Sjolund's (Sjolund) U.S. Patent No. 4,221,071 *** The jury was asked to decide the question of obviousness.
>
> ***

The jury was not at liberty to disbelieve the evidence which established these devices as prior art.

***

Thus, if the jury did construe the word "baffle" to require a rigid design, and the word "panel" to require a panel of a latticed construction, it erred as a matter of law. [pp. 1574, 1575, 1579]